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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

70-90

No. ~~1412~~

JOHN SCHILB, et al.,
Plaintiffs-Appellants,

vs.

VINCENT P. KUEBEL, as Clerk of the Circuit Court of St. Clair County, et al.,
Defendants-Appellees.

On appeal from the Supreme Court of the State of Illinois

JURISDICTIONAL STATEMENT

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Defendants-Appellees.

On appeal from the Supreme Court of the State of Illinois

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the Supreme Court of Illinois which held the bail cost retention provision of the Illinois Criminal Code [Ill. Rev. Stat. 1963 etc. Cp. 38, Par. 110-7(f)] valid and not in contravention of the Due Process and Equal Protection of the Laws Clauses of the Fourteenth Amendment to the Constitution of the United States.

OPINIONS BELOW

The majority opinion of the Supreme Court of Illinois was filed on October 7, 1970, with the dissent of Mr. Justice Thomas E. Kluczynski and Mr. Justice Walter V. Schaefer noted (App. A, p. 1).

On December 3, 1970 the written dissenting opinion was filed (App. B, p. 16) and appellant's Petition for Rehearing was denied (App. C, p. 19).

The majority and dissenting opinions are reported at 46 Ill. 2d 538 and 264 N.E. 2d 377.

JURISDICTION

This action was instituted by John Schilb, individually and for all others similarly situate, who were charged bail costs under Sec. 110-7(f) of the Illinois Criminal Code [Ill. Rev. Stat. 1963 etc. Cp. 38, Par. 110-7(f)] (App. D, p. 23).

The complaint sought a declaratory judgment that Sec. 110-7(f) violates the Equal Protection of the Laws and Due Process Clauses of the Fourteenth Amendment to the Constitution of the United States (Rec. Ex. C-5). The Circuit Court of St. Clair County, Illinois, specifically held Sec. 110-7(f) of the Illinois Criminal Code constitutional (Rec. Ex. C-18). An appeal was taken to the Supreme Court of the State of Illinois which on October 7, 1970, affirmed the decision of the trial court (App. A, p. 1).

A Petition for Rehearing was filed and thereafter, on December 3, 1970, the Petition was denied (App. C, p. 19) and the dissenting opinion of Mr. Justice Thomas E. Kluczynski and Mr. Justice Walter V. Schaefer filed (App. B, p. 16). A Motion for Reconsideration of the denial of

the Petition for Rehearing was denied on January 14, 1971 (Rec. 13).

The Notice of Appeal to the Supreme Court of the United States was filed on February 12, 1971 (Rec. 16).

The jurisdiction of the Supreme Court of the United States to review the judgment of the Supreme Court of Illinois by appeal is conferred by 28 U.S.C. 1257(2) and sustained by *Rinaldi* v. *Yeager,* 384 U.S. 305 (1966); *Giaccio* v. *Pennsylvania,* 382 U.S. 399 (1966).

STAUTE INVOLVED

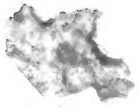
This cause involves the constitutionality of the bail cost retention provision of Section 110-7(f) of Art. 110 of the Illinois Criminal Code [Ill. Rev. Stat. 1963 etc. Cp. 38, Par. 110-1 *et seq.*] (App. D, pp. 20-29).

QUESTIONS PRESENTED

The following questions relating to the Due Process and Equal Protection of the Law Clauses of the Fourteenth Amendment to the Constitution of the United States are presented by this appeal:

1. May a State impose a bail cost on only one segment of a class seeking pretrial release without contravening the decision of this Court in *Rinaldi* v. *Yeager,* 384 U.S. 305, 308 (1966)?

2. May a State impose bail costs on the poor and non-affluent while imposing no such costs on the rich and affluent, without contravening the spirit and principles of *Griffin* v. *Illinois,* 351 U.S. 12 (1956); *Bandy* v. *U.S.,* 81 S. Ct. 197 (1960); and the Federal Bail Reform Act of 1966 (18, U.S.C., 3141-3152)?



3. May a State impose a bail cost on a person found innocent of a criminal charge without violating the spirit of *Giaccio* v. *Pennsylvania,* 382 U.S. 399 (1966); and, the Federal Bail Reform Act of 1966, (18, U.S.C., 3141-3152?

STATEMENT OF THE CASE

The 73rd General Assembly of the State of Illinois revised its statutory bail procedures by enacting Article 110 of the Illinois Criminal Code [Ill. Rev. Stat. 1963, Cp. 38, Par. 110-1 *et seq.*] (App. D, pp. 20-29).

Article 110 provides for the pretrial release of a criminally accused in one of three ways: his own recognizance (Section 110-2) (App. D, p. 20); deposit of 10% of the full amount of bail (Section 110-7) (App. D, pp. 22-24); or, deposit of cash, stocks or bonds in the full amount of bail, or pledging real estate in double the amount of bail (Section 110-8) (App. D, pp. 24-27).

This statute further provides for the imposition of a bail cost on those released on deposit of 10% of bail [Section 110-7(f)] (App. D, p. 23). Conversely, under either release on recognizance (Section 110-2) or on the deposit of the full amount of bail (Section 110-8) *no costs are imposed.*

On July 29, 1969, John Schilb individually and on behalf of all others similarly situate, as a class, filed a Complaint in Chancery alleging that the bail cost retention provision of Section 110-7(f) of the Illinois Criminal Code "* * * is unconstitutional and deprives said defendants (in criminal proceedings) of their property without due process of the law, and in violation of equal protection of the laws contrary to the 14th Amendment to the Constitution of the United States * * *" (Rec. 1, C. 5).

The States Attorney of St. Clair County specifically de-

nied the aforementioned allegation in his answer (Rec. 1, C. 11). Trial briefs were filed and the Federal Constitutional questions were raised therein.

The Circuit Court of St. Clair County on July 6, 1970 found the issues against the plaintiffs, and "particularly finds Section 110-7, Subparagraph (f) of the Criminal Code proceedings is constitutional" (Rec. 1, C. 18).

An appeal was taken directly to the Supreme Court of Illinois for as the opinion states: "The case involves substantial constitutional questions, giving this Court jurisdiction on direct appeal" (App. A, p. 1).

The Federal Constitutional questions were raised in the Supreme Court of Illinois in the Appellants Brief (Rec. 2, p. 2); contested in the Briefs filed for the defendants (Rec. 3), and for *Amicus Curiae* (Rec. 6); and, reiterated in the Reply Brief, (Rec. 5), Oral Argument, Petition for Rehearing (Rec. 10) and Motion for Reconsideration of the denial of the Petition for Rehearing (Rec. 12).

These Federal Constitutional issues were noted in the Opinion of the Supreme Court of the State of Illinois (App. A, p. 3):

> "Plaintiffs contended that the cost retention provision of Section 110-7(f) of the Code of Criminal Procedure is unconstitutional because it violates the equal protection and due process clauses of the Fourteenth Amendment to the Federal Constitution: * * *"

and the Court specifically ruled (App. A, pp. 14, 15):

> "No unconstitutional discrimination is involved and the legislative enactments are not in violation of fundamental concepts of due process or equal protection of the law."

THE FEDERAL QUESTIONS PRESENTED ARE SUBSTANTIAL

The Federal constitutional questions presented in this appeal are substantial and require the plenary consideration of this Honorable Court.

THE ISSUES PRESENTED ARE OF TIMELY AND NATIONAL IMPORTANCE

In recent years there has been much disenchantment with the inequalities of the bail system on both Federal and State levels.

In 1963, the 73rd General Assembly of the State of Illinois revised its bail proceedings by enacting Article 110 of the Illinois Criminal Code (Ill. Rev. Stat. 1963, Cp. 38, Par. 110-1 et seq.) (App. D, pp. 20-29), which provides for the pretrial release of a criminally accused:

1. On his own recognizance (Sec. 110-2 (App. D, p. 20);

2. Deposit of 10% of the full amount of bail (Sec. 110-7) (App. D, pp. 22-24);

3. Deposit of cash, stocks or bonds in the full amount of bail, or pledging real estate in double the amount of bail (Sec. 110-8) (App. D, pp. 24-27).

Section 110-7 (f) (App. A, p. 23) of the statute imposes a bail cost upon those released under Section 110-7—but imposes no costs upon those released under Sections 110-2 or 110-8.

Similarly, Senate bills 2838, 2839, 2840 were introduced into the 88th Congress which were a Federal counterpart of Article 110. As in Illinois, Senate Bill 2840 (App. E, pp. 30-32) sought to impose a bail cost on those deposit-

ing 10% of bail. These bills died in Committee; however, the substance thereof was resubmitted in the 89th Congress as Senate Bill 1357 (Federal Bail Reform Act of 1966)—with one major exception—S. 1357 removed the bail cost provision on those depositing 10% of bail. Thus, under Federal procedure no bail costs are imposed on any segment of the class seeking pretrial release [18 U.S.C. 3146(a)(3)].

Subsequent to the enactment of the two foregoing statutes, several of the States enacted provisions permitting cash deposits and release upon recognizance. Significantly three states have enacted 10% deposit provisions similar to Section 110-7 and 18 U.S.C. 3146(a)(3).

Two of these states, Alaska[1] and Iowa[2], properly followed the Federal Act and impose no cost on any segment of the class gaining pretrial freedom. However, last July, Wisconsin[3] followed Illinois, in part, by imposing a bail cost on those depositing 10% who were found guilty —but properly imposed no cost on the acquitted or discharged.

It is submitted that because of the pressing necessity of bail reform, other states are enacting, or will enact, progressive bail legislation. If the decision of the Supreme Court of Illinois is permitted to stand, it will serve as precedent and inducement for states to impose unconstitutional bail costs upon the citizens of the United States.

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1. Section 12.30.020 of Code of Criminal Procedure (Alaska Stat. Ann. Cp. 30, Section 12.30.020).

2 Section 763.16 of Bail (Iowa Code Ann. 1967, Section 763.16).

3. Sections 969.02 and 969.03 of Criminal Procedure (Wisconsin Stat. Ann. 1970, Ch. 969, Pars. 969.02-03).

I.

THE IMPOSITION OF A BAIL COST ON ONLY ONE SEGMENT OF A CLASS SEEKING PRE-TRIAL RELEASE IS IN CONTRAVENTION OF THE DECISION OF THIS COURT IN RINALDI V. YEAGER, 384, U.S. 305, 308 (1966).

Article 110 of the Illinois Criminal Code provides for pretrial release upon an individual's recognizance (Sec. 110-2); deposit of 10% of bail (Sec. 110-7); or, deposit of full bail (Sec. 110-8).

All form a class to whom services are rendered by the Clerk of the Court (App. A, p. 3). Yet, a bail cost is imposed only on those released by depositing 10% of full bail—with the ultimate result that one segment bears the burden of defraying the administration of all bail bonds.

Appellants submit that the aforementioned imposition of costs on this one segment of the class is in direct conflict and indistinguishable from the decision of this Court in *Rinaldi* v. *Yeager,* 384 U.S. 305, 308 (1966).

In *Rinaldi,* New Jersey, by statute, afforded all unable to procure a transcript of their criminal trials, a free transcript for the purpose of appeal. However, it went one step further and provided that one incarcerated in the penitentiary after the affirmance of his conviction was required to repay the cost of the transcript. No corresponding charge was imposed on parolees, probationers, or those given a suspended sentence.

In the Opinion by Mr. Justice Stewart, expressing the view of 8 members of the Court, it was held (p. 308) that a statute imposing costs on only one segment of a class is in violation of the Equal Protection Clause of the Four-

teenth Amendment to the Constitution of the United States.

Section 110-7(f) of Illinois Criminal Code is equally unconstitutional for it imposes a cost on only one segment of the class afforded a service by the Clerk of the Court.

II.

THE IMPOSITION OF BAIL COSTS ON THE POOR AND NON AFFLUENT WHILE NO SUCH COSTS ARE IMPOSED ON THE RICH AND AFFLUENT IS IN DIRECT CONTRAVENTION OF THE SPIRIT AND PRINCIPLES OF GRIFFIN V. ILLINOIS, 351, U.S. 12 (1956), AND THE FEDERAL BAIL REFORM ACT OF 1966.

This Court has consistently held that a person cannot be penalized in a quest for justice due to a lack of wealth. *Griffin* v. *Illinois,* 351 U.S. 12 (1956); *Gideon* v. *Wainwright,* 372 U.S. 335 (1963); *Douglas* v. *Green,* 363 U.S. 192 (1960); *Pointer* v. *Texas,* 380 U.S. 400 (1965); *Douglas* v. *California,* 372 U.S. 353 (1963); *Coppedge* v. *U.S.* 369 U.S. 438 (1962); and, *Malani* v. *Illinois,* 386 U.S. 12 (1967).

In relation to the *Griffin* doctrine, Mr. Justice Douglas in *Bandy* v. *U.S.,* 81 S. Ct., 197 (1960) (bail application) made it eminently clear that when discussing "rich man —poor man," the poor man is not necessarily destitute, but rather, a man without "enough property to pledge for his freedom".

Poverty, therfore, in relation to bail, is merely whether one possesses sufficient assets to meet the bond set by the Court.

It has been established that as the amount of bail increases the percentage of those able to obtain pretrial release significantly decreases (Hearing before Committee on Judiciary, U.S. Senate, 88th Congress, 2d Session, S. 2838, S. 2839, and S. 2840, Aug. 4-6, 1964, pg. 364-Statistics). As Mr. Justice Thomas E. Kluczynski and Mr. Justice Walter V. Schaefer, in their dissent in the instant case stated: (App. B, p. 16); "This Court must take judicial notice of the fact many defendants cannot afford to pay the full amount of bail." Accord.[4]

It was this concept that led to the passage of the Federal Bail Reform Act of 1966, and Article 110 of the Illinois Criminal Code. These statutory provisions enable those unable to afford the full amount of bail to exercise their constitutional right to pretrial freedom [*Stack* v. *Boyle*, 342 U.S. 1 (1951)], by depositing 10% of the full amount of bail.

Since many defendants in criminal cases lack "enough property" to deposit the full amount of bail, they have *no choice* but to deposit 10% or remain incarcerated and suffer the pitfalls attendant thereto. *Bandy* v. *U.S.*, 81 S. Ct. 197 (1960).

Upon these non-affluent, Illinois *imposes a bail cost* (Section 110-7). No such cost is imposed by the Federal Act [18 U.S.C. 3146(a)(3)]. In addition, Illinois *imposes no bail costs* on the rich or affluent who can afford the

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4. Bail Reform Act of 1966 (18 U.S.C. 3141-3152); Congressional Record (Vol. 112 Con. Rec. 89th Congress, Second Session pp. 12488-12504); S.H.A. Ch. 38, Sec. 110, Committee Comments; Attorney General's Committee on Poverty and the Administration of Criminal Judicial Procedure (U.S.C. Cong. and Admin. News 1966); National Conference on Bail and Criminal Justice, May 27, 1964.

full amount of bail (Section 110-8). Thus, those least able to afford it, the poor and non-affluent, who have *no choice* but to remain in jail or deposit 10% of bail, are unconstitutionally "penalized in a quest for justice due to a lack of wealth". *Griffin* v. *Illinois,* 351 U.S. 12, (1956).

III.

THE IMPOSITION OF A BAIL COST ON AN ACCUSED FOUND INNOCENT OF A CRIME VIOLATES THE SPIRIT OF GIACCIO V. PENNSYLVANIA, 382 U.S. 399 (1966).

There is an additional aspect of the bail cost provision of Section 110-7(f), which is legally and socially shocking. An innocent person accused of a crime, put to the expense and anguish of a trial, and then discharged, is assessed a cost for exercising his constitutional right to release pending trial.

In *Giaccio* v. *Pennsylvania,* 382 U.S. 399 (1966), Mr. Justice Stewart and Mr. Justice Fortas, in concurring opinions (p. 451-2), stated that the imposition of a cost upon an innocent accused violates the most rudimentary concept of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States. Is this not the law of the land?

CONCLUSION

For the foregoing reasons this Court should note probable jurisdiction in this case and give plenary consideration to the substantial constitutional questions presented.

Respectfully submitted,

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APPENDIX A

MAJORITY OPINION

Docket No. 42845—Agenda 47—March, 1970

JOHN SCHLIB *et al.*, Appellants, *vs.* VINCENT P. KUEBEL, Circuit Clerk, *et al.*, Appellees.

Mr. JUSTICE BURT delivered the opinion of the court:

Plaintiffs appeal from an order of the circuit court of St. Clair County dismissing their complaint against defendants, clerk of the circuit court of St. Clair County, county treasurer of St. Clair County and county of St. Clair, in a class action wherein plaintiffs alleged that the cost retention provisions of section 110—7(f) of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1963, ch. 38, par. 110—7(f) are unconstitutional, and sought recovery on behalf of all those who had been charged with and had paid bail bond costs under the statute in question in the circuit court of St. Clair County from and after the effective date of the act. The case involves substantial constitutional questions, giving this court jurisdiction on direct appeal.

The cause was submitted in the trial court on a stipulation of facts which we summarize here to the extent necessary for purposes of this decision. The act in question was adopted on August 14, 1963. Since that time Vincent P. Kuebel, clerk of the circuit court of St. Clair County, and Maurice J. Joseph, treasurer of said county, and their predecessors in office, acting under the statutory provisions, have collected from plaintiff, John Schlib, and many other defendants in criminal actions, who were acquitted by trial courts of their respective charges, a sum equal to 10% of their respective deposits of bail security. These collections were made in good faith by those officials in

accordance with their oaths of office as understood by them and under color of authority of the act. The exact account of all of said collections are present in the records of said offices and should be agreed upon by the parties for subsequent purposes in the event the court shall award the relief sought by plaintiffs.

On January 16, 1969, Schlib was arrested and charged with leaving the scene of an accident, on which he posted $50 cash bail security and obstructing traffic on which $25 cash bail was posted. He was found guilty of one charge and not guilty of the other. He was charged and paid, in addition to any fine, $5 and $2.50, or a total of $7.50 as cost charges for such bail. A large number of other defendants have paid the 10% bail charge required by the statute after being found guilty (whether by trial or on plea) or upon being found not guilty (either by trial or dismissal.) It was agreed that the essential questions of fact, as concerns the issue, are similar as to all defendants in all criminal cases in said circuit court, since the effective date of the act, who posted cash bail security, and that questions of law are similar in all such cases also as they pertain to the issues, particularly the claim of unconstitutional collection of bail bond costs which is common to the interest of such defendants in criminal cases in said court.

The parties further agreed that there was a *bona fide* dispute between them brought without collusion; that it is impractical if not impossible to join all members of the class to which plaintiff belonged as parties; that this action would avoid undue and unnecessary multiplicity of actions and that plaintiff, Schlib, brings the action in a representative capacity for and on behalf of each member of the class whose interests are similar who would proportionately share in the expenses of the litigation.

In addition to including in their stipulation the entire provisions of section 110—7, the parties refer to section 110—8 (Ill. Rev. Stat. 1969, ch. 38, par. 110—8) and state that it provides in essence for depositing of cash, stocks or bonds in the full amount of bail or pledging interests in real estate in double the amount of bail fixed without payment of any fee and that actual costs of administering the provisions of sections 110—7 and 110—8 are substantially the same but that there may probably be a slightly higher cost attendant upon administering section 110—8.

Finally, the parties agreed that the amount of bail in each particular case is not fixed by the clerk or treasurer but by a judge whose discretion is not guided by statute, rule of court or any fixed standard; that various judges fix the amount of bail for the same types of offenses at various and divers amounts, without relationship as to guilt or innocence of the particular defendant and without relationship of the particular offense and the bail fixed.

Plaintiffs contend that the cost retention provision of section 110—7(f) of the Code of Criminal Procedure is unconstitutional because it violates the equal-protection and due-process clauses of the fourteenth amendment to the Federal constitution and section 2 of article II of the constitution of Illinois. Specifically it is urged that the cost retention provision creates a discriminatory disparity within a homogeneous class; that it operates to create an unconstitutional disparity between the affluent and non-affluent and that it is unconstitutional as creating a disparity among those obtaining release by the deposit of 10% of the amount of bail. Additionally it is claimed that the provision is illegal and void as in violation of section 19 of article II of the Illinois constitution because it amounts to requiring an assessment of costs against a

discharged defendant. Defendants argue that these claims of unconstitutionality are without merit. They also suggest that there is no basis for the bringing of a class action under the facts here involved.

In 1963 the General Assembly enacted the Code of Criminal Procedure (Ill. Rev. Stat. 1963, ch. 38, pars. 100—1 *et seq.*) Among its comprehensive provisions are those of article 10 relative to bail in criminal cases. (Ill. Rev. Stat. 1963, ch. 38, pars. 110—1 to 110—5 inclusive.) Section 110—2 provides for the release of an accused on his own recognizance where from all the circumstances the court is of the opinion that the accused will appear as required either before or after conviction. The statute imposes criminal sanctions for failure to appear as required as well as provisions for forfeiture and collection. (Ill. Rev. Stat. 1963, ch. 38, par. 110—2.) Section 110—7 represents a new departure in dealing with the problems of bail in this State. It provides that a person for whom bail has been set shall execute a bail bond and deposit with the clerk of the court a sum of money equal to 10% of the bail upon the deposit of which he shall be released subject to the conditions of the bond which involve forfeiture of the full amount for nonappearance as well as the imposition of a criminal penalty. Section 110—7(f) provides for a return of 90% of the bail deposit when the conditions of the bond have been performed and the accused has been discharged from all obligations with the stipulation that the clerk shall retain as bail bond costs 10% of the amount deposited. (Ill. Rev. Stat. 1963, ch. 38, pars. 110—7(a) (b), (f).) The amount retained represents one percent of the amount of bail originally set by the court. Section 110—8 provides for a different type of procedure in posting bail from that prescribed in section 110

—7. It provides that "in lieu" of the bail deposit provided for in section 110—7 any person for whom bail has been set may execute the bail bond with or without sureties, which bond may be secured by a deposit with the clerk of an amount equal to the bail, of cash, or stocks and bonds, or by real estate situated in this State with unencumbered equity not exempt, owned by the accused or sureties worth double the amount of bail set in the bond. (Ill. Rev. Stat. 1963, ch. 38, par. 110—8.) With the exception of certain changes not directly involved in the questions presented in this appeal the foregoing statutory provisions remain substantially the same at this time and the three alternative means or methods specified in article 10 constitute the only ways in which release on bail can be had in this State. See: Ill. Rev. Stat. 1969, ch. 38, pars. 110—2, 110—7, 110—8.

The above legislative enactments represent substantial reforms in bail practices in this State and came about only after extensive studies of certain evils inherent in our former system and a comparison with practices in the Federal courts and in other jurisdictions. (See Committee Comments, S.H.A., ch. 38, § 110—1 *et seq.* 298 *et seq.*)From this rather extensive and revealing discussion it appears that the central purpose of the legislature in enacting sections 110—7 and 110—8 was to severely restrict the activities of professional bail bondsmen who customarily collected 10% of the amount of a bond as a fee which was retained whether or not the conditions of the bond were met by the accused. The prevalence of this practice was noted in our opinion in *People ex rel. Gendron* v. *Ingram*, 34 Ill: 2d 623, 626, in which this court sustained the constitutionality of the 1965 amendment to section 110—1(g) of the Code of Criminal Procedure making sections 110—7 and 110—8 the exclusive means of posting

bonds in criminal cases in this State. In short, as the Committee Comments show, the object of the statutes was to reduce the cost of liberty to arrested persons awaiting trial. One of the matters noted in connection with the former practice was that the pecuniary loss deterrent to jumping bail which was its central idea was simply not working in a system where payment of a bond premium was required without regard to performance of conditions. At the same time certain studies showed that, in spite of collecting a 10% fee, actual judgment on forfeitures paid by professional bondsmen amounted to only one per cent of the bonds written. It was reasoned, therefore, by those who studied the problem that a much fairer system would result if a plan such as that provided by section 110—7 were evolved with an accused, who has faithfully performed the conditions of his bond, retaining substantially the amount formerly pocketed by the professional bondsman while allowing to the courts a reasonable fee as bond costs for handling bail bonds and offsetting the monetary amount of any loss resulting from the occasional bail jumpers where the professional bondsman under the former system might have forfeited the amount of bail. Otherwise stated, the ultimate objective of this reform was to regain from professional bondsmen the control of bail releases and restore such control to the courts where it rightfully belongs. (See Bowman, The Illinois Ten Per Cent Bail Deposit Provision, 1965 Ill. L. Forum 35, 36-37.) As the author points out, the scheme devised in this State has since been copied in bills introduced in other States and in Congress. As finally adopted the bill passed by Congress eliminated the 10% retention of the cash deposit. (18 U.S.C. 3146(a)(3).) But New York's applicable legislation provides that cash, stocks and bonds may be

deposited in lieu of bail and that a fee of two per cent for receiving, keeping and paying out the same may be charged. See: N.Y. Code of Criminal Procedure, vol. 66, sec. 586.

Plaintiffs' first point is that section 110—7(f) of the Code of Criminal Procedure is unconstitutional because it requires those seeking release under the provisions of section 110—7 to pay bond costs, whereas those who use either section 110—2 (recognizance) or section 110—8 (deposit of full amount in cash or securities or pledge of real estate in double the amount) are not required to pay any costs whatever. In this connection plaintiffs argue that all accused are *sui generis,* for each seeks pretrial release, and that to require payment of costs as a condition of pretrial freedom in the one case and not in the others constitutes an unconstitutional discrimination among the members of a homogenous class.

With respect to plaintiffs' position on unconstitutional classification it will be observed that it rests entirely upon the assumption that there is no basic or reasonable difference between those obtaining release under sections 110—2, 110—7 and 110—8. It is said that all are accused of crime and seek release from pretrial custody and that the difference in their treatment relative to cost is a violation of fundamental concepts of equal protection and due process. In other words, the argument is that because the result of release is sought in each case there is but one class of persons who must be treated alike. However, though the end result may be release in all cases, whatever course may be followed, it must be apparent, we believe, that the means by which release is sought is entirely different in each of the sections of the statute in question. This is not only factually so but historically the legislative approach

to the problems presented was to design the different sections of the statute to meet specific separate problems. (See Committee Comments, S.H.A., ch. 38 § 110—1 *et seq.* p. 298 *et seq.*) Thus section 110—2 providing for release on the accused's own recognizance was designed to meet a condition revealed by factual studies which proved that the great majority of persons released on bail have no intention of violating bail and will appear for trial. The studies further developed a second premise, that to the extent that pecuniary loss is a deterrent, such financial loss should be minimized in the case of the person who appears for trial. Section 110—7 (deposit of 10% of the amount fixed for bail with a return of 90% of the deposit on performance of conditions) was designed specifically to fulfill the needs shown by the second premise and curtail the activities of the professional bondsman. This section, by its wording, is obviously designed as the principal method to be used in giving bail. Section 110—8 provides for a method which may be used in "lieu of the bail deposit provided for in section 110—7" and, according to the comment, is designed primarily to meet the need of a method of posting relatively small amounts of cash bail in traffic cases and the like. It is stated in the above reference at p. 324: "It should always be kept in mind, however, that section 110—7 provides for one type of procedure in posting bail, section 110—8 another."

It appears that the legislature did not consider itself as dealing with a single problem—*i.e.*, a provision of procedures for those entitled to bail generally. Instead it regarded situations possibly giving rise to separate needs and sought to accommodate those requirements. As to section 110—7, as already related, it sought to reduce the cost of bail and the high incidence of "bail gouging" by

providing a method whereby any citizen accused of crime might have his liberty pending trial with a minimum of cost. On the other hand, it was careful to recognize and protect the rights of those who could and should be released upon ther own recognizance within the limits of judicial discretion without any bond cost whatever. In none of the provisions in question is release conditioned upon the payment of bail costs in advance nor can payment of the one percent fee ultimately deducted under section 110—7(f) be considered a condtion precedent to the selection of section 110—7 as the method of acquiring release. The only condition precedent to release under the provisions of section 110—7 is the payment of 10% of the amount of bail as fixed by the court, and plaintiffs disclaim any thought of questioning the constitutionality of that requirement, for they say that the sole question before the court is the constitutionality of subparagraph (f) of section 110—7. Further, they say: "The plaintiffs herein wish to make it eminently clear that they do not in any manner fault the principles of Article 110 of the Illinois Code, they do however, take exception to the cost provision of Section 110—7(f) which is patently unconstitutional." The ultimate question on this portion of the case is, therefore, whether the provisions of subsection (f) of section 110—7 are fatal to an otherwise admittedly valid legislative classification as provided in the three sections in question and particularly that of section 110—7.

This court has held that the test whether a legislative act affords equal protection to all persons affected by it is "whether the legislative enactment requires the same means and methods to be employed alike by the persons composing the class affected so that the law operates uniformly on all persons similarly situated." (*Reif* v. *Barrett*,

355 Ill. 104, 121.) Where a law affects all members of the same class alike it is not objectionable as constituting class legislation. (*Smith* v. *Hill,* 12 Ill. 2d 588, 598.) Under article 10 of the Code of Criminal Procedure as presently enacted those entitled to bail have a choice of three methods to be used in securing release, and the choice is entirely voluntary and without compulsion. Those who elect to secure release by the deposit of 10% of the amount of bail under the provisions of section 110—7 constitute a separate class under the legislative plan and purpose as already indicated. They are not automatically placed in this class or category by the law. They join only by the exercise of their own volition. Presumably they know that the amount deposited will be subject to deduction and we know of no law or constitutional provision which would preclude their being required to pay a reasonable amount for the privilege extended to those who elect to come into this class. The requirement of a fee to help defray the cost of administrative services in the courts is a traditional and basic concept recognized as valid by this court. See: *People ex rel. Flanagan* v. *McDonough,* 24 Ill. 2d 178, 180-181.

Plaintiffs also contend that the cost retention provision of section 110—7(f) creates an unconstitutional disparity between the affluent and nonaffluent. It is said for a supposed example that accused "A" availing himself of section 110—8 deposits the full amount of bond and pays no cost, whereas accused "B", lacking sufficient property, obtains his release by depositing 10% of the full amount of bond under section 110—7 and is assessed a cost. It is argued that accused "B" is thus assessed a cost merely because his lack of affluence makes him unable to obtain his release by depositing the full amount under the provisions of section 110—8. Without stating any factual

source, plaintiffs further state that "a considerable percentage of individuals, like accused 'B' have *no choice* but to seek release on their own recognizance under Section 110—2 or the 10% provision of Section 110—7" because they have neither cash nor real estate in sufficient amount to post the full amount of their bail. These are said to be "poor men" who should not be discriminated against due to their lack of wealth. Plaintiffs say that if the size of a deposit for bail is the distinguishing factor which rendered this group different from those who deposit the full amount of bail, there is an unconstitutional differentiation which is not cognizable in law and creates a disparity based on wealth. In support of their position plantiffs cite a number of cases such as *Griffin* v. *Illinois,* 351 U.S. 12; 100 L. Ed. 891, 76 S. Ct. 585, establishing the general proposition that the individual cannot be penalized in his quest for justice due to lack of wealth. Defendants concede the validity of this principle but deny that it is applicable under the facts presented here.

The difficulty with plaintiffs' position is that it is based primarily on the assumption that a majority or at least "a large percentage" of those seeking bail would prefer to elect to proceed under section 110—8 but lack the financial means to do so and are therefore forced against their wills to ask for bail under section 110—7 by posting the deposit. We find no support for this assumption in any of the stipulated facts. As we view the situation it is just as reasonable to assume that most of those eligible would elect to perfect bail under section 110—7 because of the convenience it affords and the very small cost of only one percent actually involved. Proceedings under section 110—8 necessarily involve tying up money and property for an indefinite period. In the case of a large bond the amount pledged would be in proportion and the conse-

quent economic loss through deprivation of the opportunity to invest these funds could be considerable. It is reasonable to suppose, therefore, that even the relatively affluent would prefer to make bail under section 110—7. In any event we do not believe it can reasonably be said that choice between the means to be used is necessarily dictated by wealth or lack of wealth of the accused.

Where questions of classification are involved the reasons justifying the classification need not appear on the face of the statute and the classification will be upheld if any state of facts can reasonably be conceived to sustain it. The burden therefore rests upon one who assails the statute to negate the existence of such facts. (*Thorpe* v. *Mahin,* 43 Ill. 2d 36, 45; *Department of Revenue* v. *Warren Petroleum Corp.,* 2 Ill. 2d 483, 489-490.) As already indicated, we believe that facts can reasonably be conceived to sustain the legislation here involved as against plaintiffs' argument that there is necessarily a discrimination based on wealth. We find nothing in plaintiffs' argument which reasonably tends to negate the existence of those facts and certainly there is nothing by way of concrete evidence which does so.

As to plaintiffs' argument that the cost retention provision of section 110—7(f) creates a disparity among those obtaining release by the deposit of 10% of the amount of bail, it is said that accused "A" whose bond is set at $10,000 must deposit $1,000 and that upon fulfillment of conditions he receives a refund of $900 with the result that he has paid a cost of $100. "B" on the other hand, whose bond is fixed at only $1,000, deposits $100 and receives a refund of $90 resulting in a cost of only $10. It is claimed that there is no rational basis for this difference. While the dollar amount in the supposed

cases is different, each has paid an amount equal to one percent of his bail and therefore there is payment of the same proportionate amount in each case. Plaintiffs present no authority which sustains the proposition that enacting a charge in the same proportion in such cases involves unconstitutional discrimination and we know of no authority which would support this claim. Historically many fees and charges for the services of court officers have been fixed in proportion to the amount involved. As far as we know there has been no suggestion of unconstitutional action in such cases as long as all persons similarly situated are charged in the same proportion and at the same rate: Flat rates are also found in the field of taxation, as defendants suggest, including income taxes, retailers' occupation taxes, real-estate taxes, use taxes, and inheritance and transfer taxes. The constitutionality of these enactments has been repeatedly sustained by the courts.

Finally, there is the contention that the cost provision of section 107—7(f) is illegal and void because it amounts to an assessment of court costs against a discharged defendant. Plaintiffs cite *Wells* v. *McCullock,* 13 Ill. 606, and *Giaccio* v. *Pennsylvania,* 382 U.S. 399, 15 L. Ed. 2d 447, 86 S. Ct. 518, on this point. *Wells* involves an attempt to impose on an acquitted defendant court costs he has made in his defense. The court, relying largely upon the provisions of the statute relative to disposition of the question of costs in such cases, held that the defendant was not liable for their payment. In *Giaccio* the validity of a Pennsylvania statute authorizing the jury to impose the costs of a criminal prosecution on an acquitted defendant in a misdemeanor case was in question. The court held the statute unconstitutional on the ground of vagueness and the absence of any standards sufficient to enable a

defendant to protect himself against arbitrary and discriminatory imposition of costs by a jury. But it did not say that the imposition of such costs would be unconstitutional in any event. However, whatever the rule might be as to the imposition of court costs on an acquitted or discharged defendant, it has no application here. The payment of costs for prosecution is governed by an entirely different statute from that dealing with costs charged for the administration of bail bonds. The statute concerning the latter, as already observed, is section 110—7 of the Code of Criminal Procedure. Costs of prosecution in criminal cases are provided for in section 180—3 of the Code of Criminal Procedure as follows: "When any person is convicted of an offense under any statute, or at common law, the court shall give judgment that the offender pay the costs of the prosecution." (Ill. Rev. Stat. 1969, ch. 38, par. 180—3.) This statute obviously refers only to court costs and has no reference to bond costs which are chargeable regardless of what subsequently occurs in the prosecution of the case and regardless of the guilt or innocence of the accused. It may be conceded that court costs sustained in his defense may not properly be assessed against an accused who has won his discharge or acquittal but that has no bearing whatever on bond costs and the retention of a percentage of such costs is not tantamount to the assessment of court costs against a discharged defendant.

In conclusion we find that the classifications provided for in the statutes here involved bear a reasonable relation to the objects sought to be accomplished and are uniform as to all members of a particular class sought to be affected. No unconstitutional discrimination is involved

and the legislative enactments are not in violation of fundamental concepts of due process or equal protection of the law. Since the conclusion we have reached favors constitutionality it becomes unnecessary to discuss the other question raised, *i.e.*, the propriety of a class action.

The judgment of the circuit court of St. Clair County is affirmed.

Judgment affirmed.

Kluczynski and Schaefer, J.J., dissenting.

APPENDIX B

DISSENTING OPINION

Mr. JUSTICE KLUCZYNSKI, dissenting:

I cannot agree with the conclusions of the majority opinion.

Through *Griffin* v. *Illinois,* 351 U.S. 12, 100 L. Ed. 891, 76 S. Ct. 585, and its progeny, it has become well established that the equal-protection and due-process clauses of the fourteenth amendment require that a defendant not be penalized in a criminal proceeding due to a lack of wealth. I believe that this type of penalty exists in the treatment of various defendants under sections 110—7 and 110—8 of the Code of Criminal Procedure. A disparity of treatment results because under 110—7 the clerk retains 1% of the bail as a cost whereas under 110—8 or 110—2, no costs are involved. It is discriminatory in that some defendants cannot voluntarily choose under which bail provision they will be released. The defendant who, because of lack of wealth, cannot meet the requirements of 110—8 and who cannot qualify for release under 110—2, is forced to seek relief under 110—7, the only section which involves a cost. The majority would have us believe that there are no nonaffluent defendants or that if given the choice most defendants would choose section 110—7 for economic reasons. This court must take judicial notice of the fact that many defendants cannot afford to pay the full amount of the bail. Plaintiff has cited many authorities (Bail Reform Act of 1966, 18 U.S.C. 3141-3152; Congressional Record, vol. 112 Con. Rec. 89th Congress, Second Session pp. 12488-12504; S.H.A. ch. 38, art. 119, Committee Comments, p. 298; Attorney General's

Committee on Povery and the Administration of Criminal Judicial Procedure, U.S.C. Cong. and Admin. News 1966; National Conference on Bail and Criminal Justice, May 27, 1964) for the proposition that as the amount of bail increases, the percentage of defendants who can pay the full amount of the bail decreases. In addition, the Committee Comments (S.H.A. ch. 38, art. 110, at p. 300) state that section 110—8 is an alternative to 110—7 for "those who have the means." Once it is established that certain defendants are not financially able to proceed under section 110—8, it is no longer significant that most or all defendants would elect to proceed under section 110—7. The important consideration is not what section they would elect, but rather whether every defendant has a choice of the two sections. Realizing that certain defendants have no choice but to pay a cost under 110—7, while other financially able defendants can elect to pay nothing under 110—8, I must find that the sections in question deny equal protection and due process.

Further, in *Giaccio* v. *Pennsylvania,* 382 U.S. 399, 15 L. Ed. 2d 447, 86 S. Ct. 518, the United States Supreme Court considered the question whether a defendant may be punished after finding him not guilty. The concurring opinion specifically found: "* * * the Due Process Clause of the Fourteenth Amendment does not permit a State to impose a penalty or costs upon a defendant whom the jury has found not guilty of any offense with which he has been charged." (382 U.S. at 405.) This same concept has been recognized in Illinois in our constitution, case law, and legislative enactment. Section 19 of article II of the Illinois constitution provides that every person "ought to obtain, by law, right and justice freely, and without being obliged to purchase it, * * *." Any defendant who

is forced through economic circumstances to proceed under section 110—7 is "obliged" to pay costs for his constitutional right to pretrial liberty in violation of this provision.

This court, in *Wells* v. *McCullock*, 13 Ill. 606, held that a party who is indicted under the Criminal Code, and is acquitted, is not liable for costs. While it is true that the case involved the interpretation of a statute then in effect, a statute similar to it is presently in effect. (Ill. Rev. Stat. 1963, ch. 53, par. 32.) The court in *Wells* found that "An acquittal, or other legal discharge, absolves the defendant from the payment of *all* costs." (Emphasis added.) (13 Ill. at 608.) Any cost, whether it be termed court cost or administrative cost, is an expense in a criminal defense, and if the defendant is acquitted, imposing such a cost, in my opinion, violates the due-process clause and section 19 of article II of the Illinois constitution.

Mr. JUSTICE SCHAEFER joins in this dissent.

APPENDIX C

(SEAL)
STATE OF ILLINOIS
Office Of
CLERK OF THE SUPREME COURT
Springfield 62706
December 3, 1970

JUSTIN TAFT
Clerk
Mr. Sam S. Pessin
25 West Main Street
Belleville, Illinois 62220

Dear Mr. Pessin:

In Supreme Court today, in Case No. 42845 entitled:

John Schlib, Indv., etc.,
appellant

vs.

Vincent P. Kuebel, as Clerk of the
Circuit Court of St. Clair County,
et al., etc.,
appellees

Petition for Rehearing: Denied

I am enclosing the dissenting opinion of Mr. Justice Kluczynski concerning the above entitled cause.

Very truly yours,

/S/ JUSTIN TAFT,
Clerk of the Supreme Court.

APPENDIX D

ARTICLE 110. BAIL

110—1. § 110-1. **Definitions.)** (a) "Security" is that which is required to be pledged to insure the payment of bail.

(b) "Surety" is one who executes a bail bond and binds himself to pay the bail if the person in custody fails to comply with all conditions of the bail bond.

110—2. § 110-2. **Release on Own Recognizance.)** When from all the circumstances the court is of the opinion that the accused will appear as required either before or after conviction the accused may be released on his own recognizance. A failure to appear as required by such recognizance shall constitute an offense subject to the penalty provided in Section 32—10 of the "Criminal Code of 1961," approved July 28, 1961, as heretofore and hereafter amended, for violation of the bail bond, and any obligated sum fixed in the recognizance shall be forfeited and collected in accordance with sub-section (g) of Section 110—7 of this Code.

This Section shall be liberally construed to effectuate the purpose of relying upon criminal sanctions instead of financial loss to assure the appearance of the accused.

110—3. § 110-3. **Issuance of Warrant.)** Upon failure to comply with any condition of a bail bond or recognizance the court having jurisdiction at the time of such failure may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty on bail or his own recognizance.

110—4. §110-4. **Bailable Offenses.)** (a) All persons shall be bailable before conviction, except when death is a pos-

sible punishment for the offense charged and the proof is evident or the presumption great that the person is guilty of the offense.

(b) A person charged with an offense for which death is a possible punishment has the burden of proof that he should be admitted to bail.

110—. § 110-5. Determining the Amount of Bail.)

(a) The amount of bail shall be:

(1) Sufficient to assure compliance with the conditions set forth in the bail bond;

(2) Not oppressive;

(3) Commensurate with the nature of the offense charged;

(4) Considerate of the past criminal acts and conduct of the defendant;

(5) Considerate of the financial ability of the accused.

6) When a person is charged with an offense punishable by fine only the amount of the bail shall not exceed double the amount of the maximum penalty.

(c) When a person has been convicted of an offense and only a fine has been imposed the amount of the bail shall not exceed double the amount of the fine.

110—6. § 110-. Reduction or Increase of Bail.)

(a) Upon application by the State or the defendant the court before which the proceeding is pending may increase or reduce the amount of bail or may alter the conditions of the bail bond.

(b) Reasonable notice of such application by the defendant shall be given to the State.

(c) Reasonable notice of such application by the State shall be given to the defendant, except as provided in subsection (d).

(d) Upon verified application by the State stating facts or circumstances constituting a breach or a threatened breach of any of the conditions of the bail bond the court may issue a warrant commanding any peace officer to bring the defendant without unnecessary delay before the court for a hearing on the matters set forth in the application. At the conclusion of the hearing the court may enter an order authorized by subsection (a).

110—7. § 110-7. **Deposit of Bail Security.)** (a) The person for whom bail has been set shall execute the bail bond and deposit with the clerk of the court before which the proceeding is pending a sum of money equal to 10% of the bail, but in no event shall such deposit be less than $25.

(b) Upon depositing this sum the person shall be released from custody subject to the conditions of the bail bond.

(c) Once bail has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction the latter court shall continue the original bail in that court subject to the provisions of Section 110—6 of this Code.

(d) After conviction the court may order that the original bail stand as bail pending appeal or deny, increase or reduce bail.

(e) After the entry of an order by the trial court allowing or denying bail pending appeal either party may apply to the reviewing court having jurisdiction or to a justice thereof sitting in vacation for an order increasing

or decreasing the amount of bail or allowing or denying bail pending appeal.

(f) When the conditions of the bail bond have been performed and the accused has been discharged from all obligations in the cause the clerk of the court shall return to the accused 90% of the sum which had been deposited and shall retain as bail bond costs 10% of the amount deposited.

(g) If the accused does not comply with the conditions of the bail bond the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of such order of forfeiture shall be mailed forthwith by the court to the accused at his last known address. If the accused does not appear and surrender to the court having jurisdiction within 30 days from the date of the forfeiture or within such period satisfy the court that appearance and surrender by the accused is impossible and without his fault the court shall enter judgment for the State against the accused for the amount of the bail and costs of the court proceedings. The deposit made in accordance with subsection (a) shall be applied to the payment of costs. If any amount of such deposit remains after the payment of costs it shall be applied to payment of the judgment and transferred to the treasury of the municipal corporation wherein the bond was taken if the offense was a violation of any penal ordinance of a political subdivision of this State, or to the treasury of the county wherein the bond was taken if the offense was a violation of any penal statute of this State. The balance of the judgment may be enforced and collected in the same manner as a judgment entered in a civil action.

(h) After a judgment for a fine and court costs or either is entered in the prosecution of a cause in which a

deposit had been made in accordance with subsection (a) the balance of such deposit, after deduction of bail bond costs, shall be applied to the payment of the judgment. As amended by act approved July 31, 1967. L. 1967, p. ——, H.B. No. 862.

110—8. § 110-8. **Cash, Stocks, Bond and Real Estate as Security for Bail.)** (a) In lieu of the bail deposit provided for in Section 110—7 of this Code any person for whom bail has been set may execute the bail bond with or without sureties which bond may be secured:

(1) By a deposit, with the clerk of the court, of an amount equal to the required bail, of cash, or stocks and bonds in which trustees are authorized to invest trust funds under the laws of this State; or

(2) By real estate situated in this State with unencumbered equity not exempt owned by the accused or sureties worth double the amount of bail set in the bond.

b) If the bail bond is secured by cash or stocks and bonds the accused or sureties shall file with the bond a sworn schedule which shall contain:

(1) A list of the stocks and bonds deposited describing each in sufficient detail that it may be identified;

(2) The market value of each stock and bond.

(3) The total market value of the stocks and bonds listed;

(4) A statement that the affiant is the sole owner of the stocks and bonds listed and they are not exempt from execution;

(5) A statement that such stocks and bonds have not previously been used or accepted as bail in this State during the 12 months preceding the date of the bail bond; and

(6) A statement that such stocks and bonds are security for the appearance of the accused in accordance with the conditions of the bail bond.

(c) If the bail bond is secured by real estate the accused or sureties shall file with the bond a sworn schedule which shall contain:

(1) A legal description of the real estate;

(2) A description of any and all encumbrances on the real estate including the amount of each and the holder thereof;

(3) The market value of the unencumbered equity owned by the affiant;

(4) A statement that the affiant is the sole owner of such unencumbered equity and that it is not exempt from execution;

(5) A statement that the real estate has not previously been used or accepted as bail in this State during the 12 months preceding the date of the bail bond; and

(6) A statement that the real estate is security for the appearance of the accused in accordance with the conditions of the bail bond.

(d) The sworn schedule shall constitute a material part of the bail bond. The affiant commits perjury if in the sworn schedule he makes a false statement which he does not believe to be true. He shall be prosecuted and punished accordingly, or, he may be punished for contempt.

(e) A certified copy of the bail bond and schedule of real estate shall be filed immediately by the court in the office of the registrar of titles or recorder of deeds of the county in which the real estate is situated and the State shall have a lien on such real estate from the time such copies are filed in the office of the registrar of titles or

recorder of deeds. The registrar of titles or recorder of deeds shall enter, index and record (or register as the case may be) such bail bonds and schedules without requiring any advance fee, which fee shall be taxed as costs in the proceeding and paid out of such costs when collected.

(f) When the conditions of the bail bond have been performed and the accused has been discharegd from his obligations in the cause, the clerk of the court shall return to him or his sureties the deposit of any cash, stocks or bonds. If the bail bond has been secured by real estate the clerk of the court shall forthwith notify in writing the registrar of titles or recorder of deeds and the lien of the bail bond on the real estate shall be discharged.

(g) If the accused does not comply with the conditions of the bail bond the court having jurisdiction shall enter an order declaring the bail to be forfeited. Notice of such order of forfeiture shall be mailed forthwith by the clerk of the court to the accused and his sureties at their last known address. If the accused does not appear and surrender to the court having jurisdiction within 30 days from the date of the forfeiture or within such period satisfy the court that appearance and surrender by the accused is impossible and without his fault the court shall enter judgment for the State against the accused and his sureties for the amount of the bail and costs of the proceedings.

(h) When judgment is entered in favor of the State on any bail bond the State's Attorney shall have execution issued on the judgment forthwith and deliver same to the sheriff to be executed by levy on the cash, stocks or bonds deposited with the clerk of the court and the real estate described in the bail bond schedule. The cash shall be

used to satisfy the judgment and costs and paid into the treasury of the municipal corporation wherein the bail bond was taken if the offense was a violation of any penal ordinance of a political subdivision of this State, or into the treasury of the county wherein the bail bond was taken if the offense was a violation of any penal statute of this State. The stocks, bonds and real estate shall be sold in the same manner as in execution sales in civil actions and the proceeds of such sale shall be used to satisfy all court costs, prior encumbrances, if any, and from the balance a sufficient amount to satisfy the judgment shall be paid into the treasury of the municipal corporation wherein the bail bond was taken if the offense was a violation of any penal ordinance of a political subdivision of this State, or into the treasury of the county wherein the bail bond was taken if the offense was a violation of any penal statute of this State. The balance shall be returned to the owner. The real estate so sold may be redeemed in the same manner as real estate may be redeemed after judicial or execution sales in civil actions.

(i) No stocks, bonds or real estate may be used or accepted as bail bond security in this State more than once in any 12 month period. As amended by act approved July 31, 1967. L. 1967, p. ——, H.B. No. 862.

110—9. § 110-9, **Taking of Bail by Peace Officer.)** When bail has been set by a judicial officer for a particular offense or offender any sheriff or other peace officer may take bail in accordance with the provisions of Section 110—7 or 110—8 of this Code and release the offender to appearance in accordance with the conditions of the bail bond, the Notice to Appear or the Summons. The officer shall give a receipt to the offender for the bail so taken and within a reasonable time deposit such bail with the clerk of the court having jurisdiction of the offense.

110—10. § 110—10. Conditions of Bail Bond.) (a) If a person is admitted to bail before conviction the conditions of the bail bond shall be that he will:

(1) Appear to answer the charge in the court having jurisdiction on a day certain and thereafter as odered by the court until discharged or final order of the court;

(2) Submit himself to the orders and process of the court; and

(3) Not depart this State without leave.

(b) If the defendant is admitted to bail after conviction the conditions of the bail bond shall be that he will:

(1) Duly prosecute his appeal;

(2) Appear at such time and place as the court may direct;

(3) Not depart this State without leave of the court and

(4) If the judgment is affirmed or the cause reversed and remanded for a new trial, forthwith surrender to the officer from whose custody he was bailed.

110—11. § 110—11. Bail on a New Trial.) If the judgment of conviction is reversed and the cause remanded for a new trial the trial court may order that the bail stand pending such trial, or reduce or increase bail.

110—12. § 110—13. Persons Prohibited from Furnishing Bail Security.) No attorney at law practicing in this State and no official authorized to admit another to bail or to accept bail shall furnish any part of any security for bail in any criminal action or any proceeding nor shall any such person act as surety for any accused admitted to bail.

110—14. § 110—14. Credit for Incarceration on Bailable Offense.) Any person incarcerated on a bailable offense

who does not supply bail and against whom a fine is levied on conviction of such offense shall be allowed a credit of $5 for each day so incarcerated prior to conviction except that in no case shall the amount so allowed or credited exceed the amount of the fine.

110—15. § 110—15. **Applicability of Provisions for Giving and Taking Bail.)** The provisions of Sections 110—7 and 110—8 of this Code are exclusive of other provisions of law for the giving, taking, or enforcement of bail. In all cases where a person is admitted to bail the provisions of Sections 110—7 and 110—8 of this Code shall be applicable.

However, the Supreme Court may, by rule or order, prescribe a uniform schedule of amounts of bail in specified traffic and conservation cases, quasi-criminal offenses, and misdemeanors. Such uniform schedule may provide that the cash deposit provisions of Section 110—7 shall not apply to bail amounts established for alleged violations punishable by the fine alone, and the schedule may further provide that in specified traffic cases a valid Illinois chauffeur's or operator's license must be deposited, in addition to 10% of the amount of the bail specified in the schedule. As amended by act approved Aug. 14, 1967. L. 1967, p. ——, S.B. No. 1168.

APPENDIX E

88th CONGRESS
2d Session

S. 2840

IN THE SENATE OF THE UNITED STATES
May 14 (legislative day, March 30), 1964

Mr. Ervin (for himself, Mr. Hruska, Mr. Fong, Mr. Bayh, Mr. Williams of New Jersey, and Mr. Johnston) introduced the following bill; which was read twice and referred to the Committee on the Judiciary.

A BILL

To further implement the constitutional right to bail by permitting persons admitted to bail to make a cash deposit with the court in lieu of providing securities or other collateral security.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 207 of title 18, United States Code, is amended by adding at the end thereof a new section as follows:

"§3147. **Cash deposit**

"(a) Whenever the amount of bail has been fixed in the case of any person charged with an offense against the United States, such person shall execute a bond for his appearance, and, in lieu of providing other collateral security or sureties, may deposit in the registry of the court a sum equal to 10 per centum of the amount of bail so

fixed. Upon the deposit of such sum such person shall be released from custody subject to the conditions of this bond.

"(b) If there is no breach of condition of a bond given by any person as provided in subsection (a), the court shall release such person from the obligation of the bond, but shall retain 10 per centum of the sum deposited by such person to defray bail bond costs. The balance of such deposit shall, no judgment for court costs and/or fine being entered against such person, be returned to him. In the event judgment for court costs and/or fine is entered against such person, the balance of such deposit shall be first applied to the payment of such judgment.

"(c) If there is a breach of condition of a bond given by any person as provided in subsection (a), the court shall declare a forfeiture of the full amount of the bail fixed in the case of such person. Notice of the forfeiture shall be mailed to such person at his last known address, and, if such person does not appear as required within thirty days after the mailing of such notice and the forfeiture is not set aside by the court, the court shall render judgment of default against such person in the full amount of the bail. The court may direct that any such forfeiture be set aside if, under all the circumstances, it appears that justice does not require the enforcement thereof. Any judgment of default against such person shall be enforced by all available processes of the court, and the amount deposited by such person in the registry of the court shall be applied to the payment of costs and the balance thereof shall be applied to th judgmnt

"(d) Nothing in this section shall limit in any way the application of section 3146 of this title to any person."

(b) The analysis of chapter 207 of title 18, United States Code, is amended by inserting at the end thereof the following:

"3147. Cash deposit."

SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
MAR 20 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~1412~~ 70-90

JOHN SCHILB, et al.,

Plaintiffs-Appellants,

VS.

VINCENT P. KUEBEL, as Clerk of the Circuit Court of St. Clair County, et al.,

Defendants-Appellees.

On appeal from the Supreme Court of the State of Illinois

MOTION TO DISMISS

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